

Appl. No. 10/674,670
Docket No. CM2701Q
Amdt. dated September 30, 2008
Reply to Office Action mailed on July 9, 2008
Customer No. 27752

REMARKS

Rejection Under 35 USC §103(a) Over Funk, et al.

Claims 1-9, 11, and 21-29 have been rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 7,144,957 to Funk, et al. (hereinafter “Funk”). Applicants respectfully traverse the rejection because Funk is not available as a prior art reference.

According to the USPTO’s PAIR system, Funk has a U.S. filing date of March 23, 2004. Funk claims priority to an international application (i.e., PCT Publication No. WO03/028778) filed September 26, 2002 and published April 10, 2003. The present application has an effective filing date of September 30, 2002 (based on a proper claim of priority to a foreign application). Therefore, Funk is only available as a prior art reference under 35 U.S.C. §102(e), assuming Funk is entitled to the filing date of the international application.

Applicants respectfully remind that Office that in order for a U.S. patent or patent application to be given the filing date of an international application to which the U.S. application claims priority, for prior art purposes under 35 U.S.C. §102(e), the international application must meet three conditions. Specifically, the international application must:

- 1) have an international filing date on or after November 29, 2000;
- 2) designate the United States; and
- 3) be published under PCT Article 21(2) in English.

(MPEP §706.02(f)(1)(C)(1)(a)-(c); and MPEP §706.02(f)(1), Example 5). Applicants would like to point out that Funk claims priority to an international application that published in German. Thus, Funk is not entitled the filing date of the international application for the purposes of 35 U.S.C. §102(e) because Funk is not published in English.

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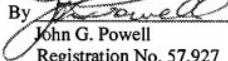
In light of the foregoing remarks, Applicants submit that Funk has an effective date of March 23, 2004 for prior art purposes under 35 U.S.C. §102(e), and is therefore not available to properly support a rejection under 35 U.S.C. §103(a). Accordingly, Applicants respectfully request that the rejection of claims 1-9, 11, and 21-29 be withdrawn.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, reconsideration of this application, and allowance of the pending claim(s) are respectfully requested.

Respectfully submitted,

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